

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI**

**In re: SHIRLEY ANN DOUGLAS
Debtor**

**CHAPTER 13 PROCEEDING
CASE NO. 09-13893-DWH**

**TERRE M. VARDAMAN, TRUSTEE FOR
THE ESTATE OF SHIRLEY ANN DOUGLAS**

PLAINTIFF

vs.

ADVERSARY NO. 10-01187-DWH

**RICHARD B. SCHWARTZ,
SCHWARTZ AND ASSOCIATES, P.A.,
VANN F. LEONARD, and JOHN DOES**

DEFENDANTS

REPLY IN SUPPORT OF MOTION TO STAY ADVERSARY PROCEEDING

Plaintiff/Debtor Shirley Douglas and Defendants Richard B. Schwartz and Schwartz and Associates, P.A. (collectively, "Schwartz") are in agreement that the action currently pending in the United States District Court for the Southern District of Mississippi, Civil Action No. 3:10cv677-DPJ-KFB, was the first-filed action and that this Adversary Proceeding should be stayed pending resolution of the first-filed action. Accordingly, Schwartz respectfully requests that the Court enter an order granting the Motion to Stay [Docket No. 20] and staying all further proceedings in connection with this Adversary Proceeding pending resolution of the first-filed action.

Schwartz disagrees with the Debtor that a stay of this Adversary Proceeding should not prevent the Court from granting Debtor's pending motion to disgorge the \$172,414.68 in attorney's fees and expenses that were paid to Schwartz pursuant to an order of this Court. See Docket No. 12. Debtor has sought this exact same relief in the first-filed action, see Exhibit A at ¶¶ 25-26 ("Plaintiff requests that Richard Schwartz and Schwartz & Associates be disgorged of the fees and expenses that they recovered in their representation of Shirley Douglas"), and further has sought summary judgment in the first-filed action on this claim. See Exhibit B at

pgs. 5-6 (“Schwartz is not entitled to keep his attorney’s fee.”). At present, Debtor’s motion for summary judgment has been fully briefed and is under consideration by the District Court. Debtor’s request that this Court move forward with considering the motion to disgorge would result in the waste of both the resources of the Court and the parties and may lead to inconsistent rulings on issues of fact and law--precisely the circumstances that the first-to-file rule is intended to prevent. See, e.g., Burger v. American Maritime Officers Union, 1999 WL 46962, *1 (5th Cir. 1999) (“The rule is grounded in principles of comity and sound judicial administration. The concern manifestly is to avoid the waste of duplication, to avoid rulings which may trench upon the authority of sister courts, and to avoid piecemeal resolution of issues that call for a uniform result.”)(internal quotations and citations omitted). Further, contrary to the Debtor’s representation in her Response that the motion was filed “in her bankruptcy proceeding,” the motion actually was filed in this Adversary Proceeding. See Docket No. 12. Accordingly, Schwartz respectfully submits that the issue of whether the attorney’s fees and expenses paid to Schwartz should be disgorged is properly before the District Court and should be resolved by the District Court.

Accordingly, Schwartz respectfully requests that this Court stay all proceedings in connection with this Adversary Proceeding pending resolution of the first-filed action currently pending in the United States District Court for the Southern District of Mississippi.

This the 28th day of December, 2010.

Respectfully submitted,

RICHARD B. SCHWARTZ and
SCHWARTZ AND ASSOCIATES, P.A.

By: s/ Joseph Anthony Sclafani
One of Their Attorneys

OF COUNSEL:

William Trey Jones, III, Esq. (MSB No. 99185)
Joseph Anthony Sclafani, Esq. (MSB No. 99670)
BRUNINI, GRANTHAM, GROWER & HEWES PLLC
The Pinnacle Building, Suite 100
190 East Capitol Street (39201)
Post Office Box 119
Jackson, MS 39205-0119
Telephone: (601) 948-3101
Facsimile: (601) 960-6902
tjones@brunini.com
jsclafani@brunini.com

CERTIFICATE OF SERVICE

I, Joseph Anthony Sclafani, hereby certify that I electronically filed the foregoing pleading or other paper with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

Selena D. Maddox, Esq. (sdmaddox63@gmail.com);

Paula E. Drungole, Esq. (drungolelawfirm@bellsouth.net);

Philip Williams Thomas, Esq. (pthomas@thomasattorney.com);

Richard C. Bradley, III, Esq. (rbradley@danielcoker.com); and

Vann F. Leonard, Esq. (vflaw@bellsouth.net).

Further, I hereby certify that I have mailed by United States Postal Service the document to the following non-ECF participants: NONE.

This the 28th day of December, 2010.

s/ Joseph Anthony Sclafani